

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2004-67-T – ORDER NO. 2004-546

OCTOBER 28, 2004

IN RE:	Application of Dan L. Rapley, Sr. d/b/a)	ORDER GRANTING
	Rapley & Sons Moving for a Class E (HHG))	CLASS E CERTIFICATE
	Certificate of Public Convenience and)	
	Necessity.)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Application of Dan L. Rapley, Sr. d/b/a Rapley & Sons Moving (“Rapley & Sons” of the “Applicant”), 17 S. Greenwood Avenue, Ware Shoals, South Carolina, 29692, for a Class E Certificate of Public Convenience and Necessity to transport commodities as follows:

Household Goods, as defined by R. 103-210(1)
Between points and places in Greenwood, Laurens, and
Greenville Counties, South Carolina.

The Commission’s Executive Director instructed Rapley & Sons to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing instructed the public as to how to file pleadings to participate in the proceedings on the Application. An Affidavit by *The Greenville News* was filed confirming publication by the Applicant of the Notice of Filing. Petitions to Intervene were received from Carey Moving & Storage, Inc., Carey Moving & Storage of Charleston, Inc., and Carey Moving and Storage of Greenville, Inc.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 2003) provides in part:
No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.
2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.
3. S.C. Code Ann. § 58-23-590(A) (Supp. 2003) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.
4. S.C. Code Ann. § 58-23-590(C) (Supp. 2003) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:
 - (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
 - (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and

able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2003) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2003) defines "Common Carrier by Motor Vehicle" as "any person¹ which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 2003) as "a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a

¹ 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Regs. 103-133 (Supp. 2003) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.² If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.

² By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654, to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2003) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

EVIDENCE OF RECORD

The hearing on the Application was held on June 23, 2004, at 2:30 P.M. in the offices of the Commission. The Honorable Mignon Clyburn presided. Representing Rapley & Sons and the sole witness for the Applicant was Dan L. Rapley, Sr., owner of Rapley & Sons. None of the Intervenors appeared at the hearing. F. David Butler, General Counsel, represented the Commission Staff. The Staff presented the testimony of L. George Parker, Jr., Manager of the Commission's Transportation Department.

Rapley testified that he started Rapley & Sons approximately one year ago with two of his sons working for the business. Rapley noted that, in addition to the pickup truck listed in his Application, he has sought to lease additional trucks for use in his business. Further, the Applicant stated that he possessed equipment that would be used in the moving business, including, but not limited to, pads to wrap furniture, box dollies, and appliance dollies. Rapley stated that there are no judgments against his company.

It should be noted that Mr. Rapley worked with Security Storage Company in Washington, DC, as well as Carey Moving & Storage for several years as a driver and crew chief. Rapley also testified as to the various other components found in the fit, willing, and able regulation criteria.

With regard to the public convenience and necessity, Rapley testified that there are no moving companies in the Ware Shoals area where he is headquartered and that there are only two moving companies in Greenwood. Further, Rapley stated that there are no moving companies in Laurens County. With regard to Greenville, the Applicant noted that it is a growing area and that people from Ware Shoals frequently have a need for moving services to that county. Rapley also testified that he has 50-60 calls a month inquiring about his ability to provide moving services.

L. George Parker, Jr., Manager of the Commission's Transportation Department, testified as to his inspection of Rapley & Sons' facilities and vehicles, showed the Commission various photographs of Rapley & Sons' facilities and vehicles, and further testified that he believed Rapley & Sons' vehicles and facilities met the Commission's criteria for operating as a moving company.

FINDINGS OF FACT

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Rapley & Sons desires to provide moving services of household goods within and between points and places in Greenwood, Laurens, and Greenville Counties, South Carolina.

2. The Applicant, Rapley & Sons, is fit, willing, and able to provide and properly perform the services which it seeks to provide. “Fitness” has been demonstrated by (1) evidence of an acceptable safety rating, (2) that there are no outstanding judgments pending against Rapley & Sons, and (3) that Rapley & Sons will operate in compliance with all statutes and regulations pertaining to for-hire motor carrier operations. Further, the record contains (1) a certification that Rapley & Sons through its principals, is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against Rapley & Sons. “Able” was demonstrated by the evidence of record which reveals that Rapley & Sons has the necessary trucks with which to perform moving services, has insurance which meets the minimum requirements set by this Commission, and has undergone an inspection by personnel from this Commission of its equipment. The evidence of record also indicates that Rapley & Sons possesses sufficient financial resources necessary to conduct for-hire motor carrier operations in South Carolina. “Willingness” was demonstrated by the filing of the Application and the testimony of the witness indicating the Applicant’s desire to undertake this business venture in South Carolina.

3. The services proposed by Rapley & Sons are required by the public convenience and necessity. We find that the witness presented on behalf of the Applicant establishes that the public convenience and necessity warrant the issuance of the permit requested by the Applicant in Greenwood, Laurens, and Greenville Counties of South Carolina. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that Rapley & Sons has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2003).

2. The Commission concludes that Rapley & Sons has sufficiently demonstrated through its presentation that the public convenience and necessity in the area in which Rapley & Sons proposes to serve requires the services proposed by the Application.

3. Based on the conclusions above, that Rapley & Sons has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that Rapley & Sons should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in R. 103-210(1):
Between points and places in Greenwood, Laurens, and
Greenville Counties, South Carolina

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Dan L. Rapley, Sr. d/b/a Rapley & Sons Moving for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for authority to transport household goods between points and places in Greenwood, Laurens, and Greenville Counties, South Carolina.

2. Dan L. Rapley, Sr. d/b/a Rapley & Sons Moving shall file the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through R. 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to Dan L. Rapley, Sr. d/b/a Rapley & Sons Moving authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure of the Applicant either (1) to complete the certification process by complying with the Commission requirements of causing to be filed with the Commission proof of appropriate insurance and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)